

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

Health Midwest, a Missouri public benefit,)
non-profit corporation)

Plaintiff,)

v.)

Case No. 02CV326118

Division I

Jeremiah W. (Jay) Nixon,)
Attorney General of the)
State of Missouri,)

Defendant,)

and as Cross-Claim Defendants,)

Malcolm M. Aslin,)
in his individual capacity and as)
Director of Health Midwest,)

Serve at:)

6415 High Drive)

Mission Hills, KS 66208)

James S. Bower, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)

Serve at:)

5400 West 101 Terrace)

Overland Park, KS 66207)

Stanley N. Brand, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)

Serve at:)

8909 Cedar Lane)

Prairie Village, KS 66207)

Richard W. Brown,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
12621 Juniper Circle)
Leawood, KS 66209)
)
Wayne R. Brusewitz,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
4328 NW Claymont Drive)
Kansas City, MO 64116)
)
Bernard Erdman,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
12205 Buena Vista)
Leawood, KS 66209)
)
Frank S. Friedman,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
11301 Brookwood)
Leawood, KS 66211)
)
Ronald W. Goldsmith,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
3104 West 117 th Street)
Leawood, KS 66211)
)
John Graham, Jr.,)
in his individual capacity and as)
Director of Health Midwest,)

)
Serve at:)
4210 Lake Drive)
Lee's Summit, MO 64064)
)
John M. Holkins, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
6135 Ward Parkway)
Kansas City, MO 64113)
)
John N. McConnell,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
2301 Stratford Road)
Mission Hills, KS 66208)
)
Rodney T. Minkin,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
8965 Linden Lane)
Prairie Village, KS 66207)
)
Karen L. Pletz,)
in her individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
411 West 46 th Terrace, #100)
Kansas City, MO 64112)
)
Clarence Roeder,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
13000 Glenfield Road)

Leawood, KS 66209)
)
J. Stephen Scherer, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
12208 Catalina)
Leawood, KS 66209)
)
Donald R. Sloan,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
433 Ward Parkway, Box 1)
Kansas City, MO 64112)
)
Gregory C. Starks, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
5244 West 126 th Terrace)
Leawood, KS 66209)
)
Roderick L. Sturgeon,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
16950 206 th Street)
Tonganoxie, KS 66086)
)
Jack L. Sutherland,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
9829 Rosewood)
Overland Park, KS 66207)
)

Scott Westlake,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
14512 Mission Road)
Leawood, KS 66224)
)
James H. Whitaker, M.D.,)
in his individual capacity and as)
Director of Health Midwest,)
)
Serve at:)
2201 Arno Road)
Shawnee Mission, KS 66208,)
)
Cross-Claim Defendants.)

**ATTORNEY GENERAL'S ANSWER, COUNTERCLAIMS, AND CROSS-CLAIMS
TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT**

COMES NOW Jeremiah W. (Jay) Nixon, Attorney General of the State of Missouri, and for his Answer, Counterclaims, and Cross-Claims to Plaintiff's Petition for Declaratory Judgment, states as follows:

1. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 1 of the Petition and therefore denies the same.
2. The Attorney General admits the allegations contained in paragraph 2 of the Petition.
3. With respect to the allegations in Paragraph 3, the Attorney General denies that jurisdiction is proper in this Court, denies specifically the allegations in Paragraph 3(A) and

Paragraph 3(E), and is without sufficient knowledge or information to either affirm or deny the remaining allegations in Paragraph 3 of the Petition and therefore denies the same.

4. The allegations contained in paragraph 4 of the Petition state a legal conclusion requiring no answer and, to the extent an answer is required, the Attorney General denies those allegations.

5. The allegations contained in paragraph 5 of the Petition state a legal conclusion requiring no answer and, to the extent an answer is required, the Attorney General denies those allegations.

6. The Attorney General denies the allegations contained in the first clause of the first sentence and the entire second sentence of paragraph 6 of the Petition, and is without sufficient knowledge or information to either affirm or deny the remaining allegations contained in paragraph 6 of the Petition and therefore denies the same.

7. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 7 of the Petition and therefore denies the same.

8. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 8 of the Petition and therefore denies the same.

9. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 9 of the Petition and therefore denies the same.

10. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 10 of the Petition and therefore denies the same, except the Attorney General admits that Health Midwest has closed certain health care facilities, depriving the public of their services, without notice to the community or opportunity for meaningful input.

11. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 11 of the Petition and therefore denies the same.

12. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 12 of the Petition and therefore denies the same.

13. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 13 of the Petition and therefore denies the same.

14. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 14 of the Petition and therefore denies the same.

15. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 15 of the Petition and therefore denies the same.

16. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 16 of the Petition and therefore denies the same.

17. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 17 of the Petition and therefore denies the same.

18. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 18 of the Petition and therefore denies the same.

19. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 19 of the Petition and therefore denies the same.

20. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 20 of the Petition and therefore denies the same.

21. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 21 of the Petition and therefore denies the same.

22. Based upon information and belief, the Attorney General admits that an asset purchase agreement dated November 22, 2002, between Health Midwest and HM Acquisition L.L.C. exists; said document speaks for itself and the Defendant denies any allegations inconsistent therewith.

23. The Attorney General states that the asset purchase agreement speaks for itself and denies any allegations inconsistent therewith contained in paragraph 23 of the Petition.

24. The Attorney General states that the asset purchase agreement speaks for itself and denies any allegations inconsistent therewith in paragraph 24 of the Petition.

25. The Attorney General states that the asset purchase agreement speaks for itself and denies any allegations inconsistent therewith contained in paragraph 25 of the Petition.

26. The allegations contained in paragraph 26 of the Petition state a legal conclusion requiring no answer and, to the extent an answer is required, the Attorney General denies those allegations.

27. The allegations contained in paragraph 27 of the Petition state a legal conclusion requiring no answer and, to the extent an answer is required, the Attorney General denies those allegations.

28. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 28 of the Petition and therefore denies the same.

29. The Attorney General denies the allegations contained in paragraph 29 of the Petition.

30. The Attorney General admits the allegations contained in the first sentence of paragraph 30 of the Petition, and denies the remaining allegations in that paragraph.

31. Defendant Attorney General admits that he has stated that the assets of Health Midwest are “public assets,” and denies any allegations contained in paragraph 31 of the Petition or elsewhere that they are not.

32. The Attorney General denies the allegations contained in paragraph 32 of the Petition.

33. The allegations contained in paragraph 33 of the Petition state a legal conclusion requiring no answer and, to the extent an answer is required, the Attorney General denies those allegations.

34. The Attorney General denies the allegations contained in paragraph 34 of the Petition.

35. The Attorney General denies the allegations contained in paragraph 35 of the Petition.

36. The Attorney General states that the asset purchase agreement speaks for itself and denies any allegations inconsistent therewith contained in paragraph 36 of the Petition.

37. The Attorney General states that the asset purchase agreement speaks for itself and denies any allegations inconsistent therewith contained in paragraph 37 of the Petition.

38. The Attorney General denies the allegations contained in paragraph 38 of the Petition.

COUNT I

39. The Attorney General restates and realleges his answers set forth in paragraphs 1-38 as if restated word for word.

40. Based upon information and belief, the Attorney General admits the allegations contained in paragraph 40 of the Petition.

41. The Attorney General denies the allegations contained in paragraph 41 of the Petition.

42. The Attorney General denies the allegations contained in paragraph 42 of the Petition.

43. The Attorney General denies the allegations contained in paragraph 43 of the Petition.

44. The Attorney General has the authority the laws gives him and, accordingly, the Attorney General denies the allegations contained in paragraph 44 of the Petition, and specifically denies that he has asserted a right to dictate to Health Midwest the manner in which the proceeds of the sale will be used.

45. The Attorney General denies the allegations contained in paragraph 45 of the Petition.

46. The Attorney General denies the allegations contained in paragraph 46 of the Petition.

47. The Attorney General denies the allegations contained in paragraph 47 of the Petition.

COUNT II

48. The Attorney General restates and realleges his answers set forth in paragraphs 1-47 as if restated word for word.

49. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 49 of the Petition and therefore denies the same.

50. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 50 of the Petition and therefore denies the same.

51. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 51 of the Petition and therefore denies the same.

52. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 52 of the Petition and therefore denies the same.

53. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 53 of the Petition and therefore denies the same.

COUNT III

54. The Attorney General restates and realleges the allegations set forth in paragraphs 1-53 as if restated word for word.

55. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 55 of the Petition and therefore denies the same.

56. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 56 of the Petition and therefore denies the same.

57. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 57 of the Petition and therefore denies the same.

COUNT IV

58. The Attorney General restates and realleges the allegations set forth in paragraphs 1-57 as if restated word for word.

59. The Attorney General denies the allegations contained in paragraph 59 of the Petition.

60. The Attorney General is without sufficient knowledge or information to either affirm or deny the allegations contained in paragraph 60 of the Petition and therefore denies the same.

61. The Attorney General denies the allegations contained in paragraph 61 of the Petition.

AFFIRMATIVE DEFENSES

Allegations Common to All Affirmative Defenses

62. The Attorney General has authority, both common law and statutory, to review a proposed transactions by a Missouri public benefit, non-profit corporation which proposes to merge into, or sell all or substantially all of its assets to a for-profit corporation.

63. At all times prior to their filing this lawsuit, Health Midwest has acknowledged this authority, and actively sought the Attorney General's approval of the transaction they propose.

64. Though no effective formal notice of their proposed transaction had been received or has yet been received, the Attorney General began the process of reviewing background information with respect to Health Midwest and soliciting public input regarding any such sale that may be proposed.

65. The Attorney General held a public hearing in Kansas City on November 18, 2002, attended by approximately 500 people. At this hearing, the Attorney General took testimony from public officials and members of the public on the transaction that had been rumored but, at that point, neither finally negotiated with HCA nor formally proposed.

66. On Friday, November 22, 2002, the Attorney General received by facsimile a signed copy of the Asset Purchase Agreement, signed on that date, which disclosed for the first time that a deal with HCA had been reached and what the terms of that deal were. This document, as with all documents the Attorney General has received from Health Midwest in connection with the Attorney General's review Health Midwest invoked, was immediately made available to any member of the public interested in reviewing it.

67. Health Midwest did not, on November 22, or on any date prior to that date or to the present time, submit to the Attorney General a formal proposal with respect to Health Midwest's intentions should the sale close. No proposal was made that Health Midwest would dissolve and distribute its then-liquid assets to a successor foundation. No proposal was made that Health Midwest would re-structure and go forward as a private foundation engaged in grantmaking. No proposal was made as to how such activities would be governed.

68. On November 26, 2002, the Attorney General held a second public hearing in Independence, Missouri, attended by more than 200 people. At this hearing, the Attorney

General took testimony from Health Midwest officials about some of the terms of the deal they had negotiated, and took testimony from members of the public regarding their concerns and suggestions about the proposed transaction.

69. On November 26, prior to the Attorney General's hearing, Health Midwest filed this present action, and communicated that fact to the Attorney General. At the hearing, despite inquiry from the Attorney General, members of the Board of Directors of Health Midwest were unable to confirm that the Board had authorized this lawsuit.

70. At no time prior to the filing of the lawsuit or to the present day has the Attorney General reached or voiced any conclusion with respect to this proposed transaction. At no time prior to the filing of the lawsuit or to the present day has the Attorney General asserted a right to control Health Midwest's use of the proceeds of this sale, if approved, other than in the lawful exercise of the authority he has. In particular, the Attorney General has not made demands on their use of those proceeds -- let alone demands that conflict with anyone else's demands -- other than to inform Health Midwest that it was incumbent upon Health Midwest to disclose to him and to the public in a formal and complete way Health Midwest's proposed use of those proceeds as part of its presentation of the transaction for which it was seeking approval. No such proposal has ever been made, despite Health Midwest's prayer in this lawsuit that its plan be declared lawful.

FIRST AFFIRMATIVE DEFENSE

71. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed for failure to establish subject matter jurisdiction in that no ripe controversy between the parties exists adequate to permit a declaratory judgment, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

SECOND AFFIRMATIVE DEFENSE

72. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed because it fails to state a claim on which relief can be granted, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

THIRD AFFIRMATIVE DEFENSE

73. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed for lack of capacity in that Health Midwest did not authorize this lawsuit to be filed in its name, that this lawsuit exceeds the purposes for which Health Midwest may lawfully act, and this lawsuit has produced and will produce an unconscionable waste of corporate assets, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

FOURTH AFFIRMATIVE DEFENSE

74. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed under the doctrine of unclean hands in that this lawsuit exceeds the purposes for which Health Midwest may lawfully act, and this lawsuit has produced and will produce an unconscienable waste of corporate assets, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

FIFTH AFFIRMATIVE DEFENSE

75. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed under the doctrine of illegality in that this lawsuit exceeds the purposes for which Health Midwest may lawfully act, and this lawsuit has produced and will produce an unconscienable waste of corporate assets, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

SIXTH AFFIRMATIVE DEFENSE

76. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

WHEREFORE, Plaintiff's Petition should be dismissed under the doctrine of laches and estoppel because, having enjoyed the benefits of non-profit, charitable status since its inception, and having conceded the Attorney General's authority and sought his review and approval, Health Midwest may not now challenge that authority or seek to prevent a determination on their proposal which the Attorney General has not yet made, and this Court should award the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

COUNTERCLAIMS and CROSS-CLAIMS

Allegations Common to all Counterclaims

77. The Attorney General restates and realleges the allegations set forth in paragraphs 62-70 as if restated word for word.

78. Defendant, Jeremiah W. (Jay) Nixon, is the duly elected Attorney General of the state of Missouri.

79. The Attorney General of Missouri represents, by statute and common law, the interests of the public in matters pertaining to and connected with charitable trusts, charitable foundations and charitable corporations.

80. Health Midwest holds itself out as a nonprofit, public-benefit corporation duly organized under the laws of the State of Missouri through articles of incorporation originally filed with the Missouri Secretary of State on March 7, 1979.

81. Health Midwest holds itself out as being recognized by the Internal Revenue Service as a charitable corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

82. Health Midwest's most recent Articles of Amendment to the Articles of Incorporation of a General Not For Profit Corporation are attached hereto as Exhibit 1 and incorporated as if more fully set out herein.

83. Pursuant to Article V of its current Articles of Incorporation, Health Midwest is organized for the particular purpose to "establish, operate and maintain health care centers, hospitals, clinics, [and] laboratories . . .," specifically listing eight hospitals corporations it controls and whose hospitals it operates: Research Medical Center, Health Midwest

Development Group, Baptist Medical Center, Trinity Lutheran Hospital, Menorah Medical Center, Medical Center of Independence, Inc., Lee's Summit Hospital and The Rehabilitation Institute.

84. Since its incorporation, Health Midwest's dominant charitable activity has been operating these hospitals and related health care facilities, as well as other hospitals and related health care facilities which it has since closed.

85. Attached hereto as Exhibit 2, and incorporated by reference herein, is a Table of Organization provided to the Attorney General by Health Midwest purporting to show Health Midwest and each of the corporate entities it owns or controls, directly or indirectly.

86. On November 22, 2002, Health Midwest signed a certain Asset Purchase Agreement with HCA, Inc. ("HCA"), by which Health Midwest agreed to sell, and HCA agreed to buy directly or through a subsidiary, substantially all of the assets of Health Midwest.

87. Among the assets Health Midwest has committed to sell are the assets associated with the thirteen acute care hospitals it currently operates, together with all related property and facilities.

88. Health Midwest has agreed, as part of the Asset Purchase Agreement (Section 12.6) to a comprehensive series of Covenants Not to Compete with HCA or the facilities HCA is purchasing. These Covenants, apparently unlimited in time, would prevent Health Midwest from owning or operating any other hospital or health care facility in the area Health Midwest was (and it) supposed to serve.

89. On December 2, 2002, counsel for Health Midwest sent a letter to the Attorney General, attached hereto as Exhibit 3 and incorporated herein by reference, purporting to give

notice that this sale could close as soon as December 22, 2002, and purporting to give notice that prior to that date Health Midwest would undertake a series of mergers among the corporations it controls (including the eight corporations listed above) with the intention of transferring ownership of all of the assets of all of these corporations into Health Midwest to facilitate the sale.

COUNTERCLAIM I

JUDICIAL DISSOLUTION PURSUANT TO § 355.726 RSMo (2000)

90. Defendant incorporates by reference his answer in paragraphs 1 through 61 above, and the allegations he has made in paragraphs 62-89 above, as though set forth verbatim at this point.

91. Section 355.726 of the Revised Statutes of Missouri provides that the Attorney General may petition for the dissolution of a non-profit, public benefit corporation whenever (a) the corporation obtained its articles of incorporation by fraud; (b) the corporation has continued to exceed or abuse the authority conferred on it by law, (c) the corporate assets are being misapplied or wasted, and (d) the corporation is no longer able to carry out its purposes.

92. Health Midwest secured, amended, and has maintained its articles of incorporation setting forth as its specific purpose to "establish, operate and maintain" certain specified health care facilities after it had developed an intention to abandon this purpose and dispose of the assets acquired in furtherance of this purpose. Such fraud is an adequate basis for judicial dissolution.

93. Section 355.131(5) of the Revised Statutes of Missouri confers authority upon non-profit corporations to sell or otherwise dispose of all or any part of its proceeds.

94. A non-profit corporation exceeds and abuses that authority when it sells or disposes of its assets to the detriment of, in contravention of, or in wholesale abandonment of its non-profit purposes.

95. On November 22, 2002, and on information and belief by vote of the Health Midwest Board of Directors on a date prior to November 22, 2002, Health Midwest committed to sell substantially all of the assets it currently owns or controls and through which it currently serves its non-profit purposes to "establish, operate and maintain" certain specified health care facilities. Health Midwest has, since that date, continued to insist that it intends to consummate the sale to HCA to which it agreed in the Asset Purchase Agreement.

96. Health Midwest's agreement to sell, and its continued insistence upon sale, constitutes a wholesale abandonment of Health Midwest's non-profit purposes and a continuing abuse or excess of the authority conferred upon it by Missouri law. Accordingly, judicial dissolution is appropriate.

97. Health Midwest exists to serve the non-profit purposes to "establish, operate and maintain" certain specified health care facilities. By agreeing to sell the very facilities it exists to "establish, operate and maintain," Health Midwest has engaged in wholesale waste and misapplication of its assets. Accordingly, judicial dissolution is appropriate.

98. Health Midwest exists to serve the non-profit purposes to "establish, operate and maintain" certain specified health care facilities. By disposing of the very facilities it exists to "establish, operate and maintain," Health Midwest has put itself in a position in which it can no

longer carry out or fulfill its purposes. Worse, Health Midwest has contractually obligated itself never to carry out or fulfill its purposes again in that it has promised HCA not to "establish, operate and maintain" any other non-profit hospital or health care facility in the communities was (and is) supposed to serve. Accordingly, judicial dissolution is appropriate.

99. Pursuant to Sections 355.731 and 355.736, the Court can issue injunctions and order custodians or receivers to protect the non-profit assets and manage the affairs of Health Midwest. The Attorney General is **not** requesting this relief at this time, but reserves the right to seek such relief in the future.

100. Pursuant to Section 355.726.2, dissolution of Health Midwest is in the public interest, and evidence of all reasonable alternatives to dissolution, if any, will be presented to the Court in due course.

WHEREFORE, the Attorney General prays for a judgment against Health Midwest, pursuant to §355.726.1, dissolving the corporation or for such reasonable alternative to dissolution as the Court may find, and for such other relief as the Court deems just and proper, including awarding the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

COUNTERCLAIM II
and (with respect to the individual directors)
CROSS-CLAIM I

REMOVAL OF DIRECTORS PURSUANT TO § 355.356.1 RSMo (2000)

101. Defendant incorporates by reference his answer in paragraphs 1 through 61 above, and the allegations he has made in paragraphs 77-100 above, as though set forth verbatim at this point.

102. The Attorney General of Missouri may bring an action for removal of directors of a public benefit corporation, pursuant to §355.356.1, RSMo., when the directors have engaged in a gross abuse of authority or discretion with respect to the corporation, including a breach of their fiduciary duties owed to the corporation and the people it exists to serve, and removal is in the best interest of the corporation.

103. Malcolm M. Aslin is presently, and was at all times alleged, a Director of Health Midwest.

104. James S. Bower is presently, and was at all times alleged, a Director of Health Midwest.

105. Stanley N. Brand, M.D. is presently, and was at all times alleged, a Director of Health Midwest.

106. Richard W. Brown is presently, and was at all times alleged, a Director of Health Midwest.

107. Wayne R. Brusewitz is presently, and was at all times alleged, a Director of Health Midwest.

108. Bernard Erdman is presently, and was at all times alleged, a Director of Health Midwest.

109. Frank S. Friedman is presently, and was at all times alleged, a Director of Health Midwest.

110. Ronald W. Goldsmith is presently, and was at all times alleged, a Director of Health Midwest.

111. John Graham, Jr. is presently, and was at all times alleged, a Director of Health Midwest.

112. John M. Holkins, M.D. is presently, and was at all times alleged, a Director of Health Midwest.

113. John N. McConnell is presently, and was at all times alleged, a Director of Health Midwest.

114. Rodney T. Minkin is presently, and was at all times alleged, a Director of Health Midwest.

115. Karen L. Pletz is presently, and was at all times alleged, a Director of Health Midwest.

116. Clarence L. Roeder is presently, and was at all times alleged, a Director of Health Midwest.

117. J. Stephen Scherer, M.D. is presently, and was at all times alleged, a Director of Health Midwest.

118. Donald R. Sloan is presently, and was at all times alleged, a Director of Health Midwest.

119. Gregory C. Starks, M.D. is presently, and was at all times alleged, a Director of Health Midwest.

120. Roderick L. Sturgeon is presently, and was at all times alleged, a Director of Health Midwest.

121. Jack L. Sutherland is presently, and was at all times alleged, a Director of Health Midwest.

122. Scott M. Westlake is presently, and was at all times alleged, a Director of Health Midwest.

123. James H. Whitaker, M.D. is presently, and was at all times alleged, a Director of Health Midwest.

124. The actions of Health Midwest described above, by and through actions of its Board of Directors and each of them, constitute a breach of each Director's fiduciary duty of obedience to the corporation's charitable purpose, as well as a gross abuse of authority or discretion with respect to the corporation. Accordingly, removal of the directors is required by law and is in the best interest of the corporation.

WHEREFORE, the Attorney General prays for a judgment against each of the named Directors individually, and against Health Midwest, removing each of the Directors of Health Midwest, pursuant to §355.356.1, RSMo., for breaches of each Director's fiduciary duty of obedience to the corporation's charitable purpose, as well as for gross abuses of authority or

discretion with respect to the corporation, and for such other relief as this court deems just and proper, including awarding the Attorney General his costs and fees associated with his review of this matter and the defense of this action.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

TRACY E. MCGINNIS
Assistant Attorney General
Missouri Bar No. 40551

CHARLES W. HATFIELD
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ATTORNEYS FOR DEFENDANT
JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the above and foregoing was mailed this _____ day of _____, 2002 to:

Blitz, Bardgett & Deutsch, L.C.
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